

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

SIGNATURE PAINTING COMPANY

and

INTERNATIONAL BROTHERHOOD OF  
PAINTERS AND ALLIED TRADES  
DISTRICT COUNCIL NO. 6, A/W  
INTERNATIONAL BROTHERHOOD OF  
PAINTERS AND ALLIED TRADES,  
AFL-CIO, CLC

Cases 8-CA-29274  
8-CA-29308  
8-CA-29362  
8-CA-29626  
8-RC-15643

*Thomas Randazzo, Esq.,*  
of Cleveland, Ohio,  
for the General Counsel.  
*Richard P. James, Esq.,*  
of Toledo, Ohio,  
for the Charging Party

BENCH DECISION

Statement of the Case

RICHARD H. BEDDOW, JR., Administrative Law Judge. This matter was heard in Cleveland, Ohio on June 29, 1998. The proceeding is based upon a charge filed by the Union on August 25, 1997 and the Regional Director's consolidated complaint dated March 31, 1998 which alleges that the Respondent violated Section 8(a)(1)(3) and (5) of the National Labor Relations Act, essentially as otherwise set forth in the findings below.

The Respondent, through Counsel, filed an Answer to the Consolidated Complaint dated April 7, 1998, however, by Notice dated June 22, 1998, the attorney withdrew as Counsel. A Subpoena Duce Tecum was issued on June 19, 1997 to Mike Winney, Respondent's owner, and served on June 22, 1998, however, he failed to appear at the hearing. A recess was taken and after approximated 30 minutes no representative of the Respondent appeared and the hearing went forward based upon the denials contained in the Respondent's Answer.

At the close of hearing, I delivered a Bench Decision, pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations, which found that the Respondent has engaged in the unfair labor practices alleged and ordered appropriate remedial action designed to effectuate the policies of the Act.

In accordance with the provisions of Section 102.45 of the Board's Rules and Regulations I certify the accuracy of pages 98 through 104 of the transcript which pages contain the decision and I hereby file with the Board a certified copy of those pages, which otherwise are attached hereto as Appendix A.



## Conclusions of Law

1. Respondent, Signature Painting Company, is an Employer engaged in commerce  
5 within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. At all material times Mike Winney, Matt Woodford, George Stuart and Steve Morse  
10 have been supervisors of Respondent within the meaning of Section 2(11) of the Act and  
agents of Respondent within the meaning of Section 2(13) of the Act.

4. By promulgating and maintaining the following arbitration provision or agreement in  
15 its applications for employment that applicants are required to sign in order to gain employment  
with the Respondent:

I agree that any dispute, claim or controversy which may arise between me and  
Signature Painting with regard to this Application for Employment, or with regard  
20 to my employment by the Company if hired, including any claim that I was not  
hired, or that I was disciplined or discharged, as a result of my age, sex, color,  
race, creed, national origin, religious persuasion, union affiliation, or disability, or  
in violation of Ohio law, shall be subject to and fully settled by mandatory and  
binding arbitration administered by the American Arbitration Association in  
25 accordance with the AAA National Rules for the Resolution of the Employment  
Disputes. The Arbitrator shall have authority to award any remedy that an Ohio  
or Federal court or Ohio or federal agency could award or grant in a similar  
dispute. In any such arbitration proceeding, the Applicant shall have the right to  
be represented by a spokesman of his/her choosing. The arbitrator shall have  
30 the authority to award the Applicant reimbursement of some or all of the  
attorneys fees and other costs expended, if successful.

Respondent has engaged in unfair labor practices in the violation of Section 8(A)(4) and (1) of  
the Act by discouraging its employees from forming, joining, or assisting the Union or engaging  
35 in other protected concerted activities and/or discouraging its employees from filing charges  
and pursuing administrative remedies under the Act.

5. By informing employees that the owner would never allow the Union to represent the  
Respondent's employees, threatening to discharge employees if they selected the Union as  
40 their collective bargaining representative; threatening to close the Respondent's operation if the  
employees selected the Union as their collective bargaining representative and threatening  
employees that they would be laid off or lose their jobs if they voted for the Union in the  
election; by inferring that it would be futile for the employees to select the Union, and by  
interrogating employees about their sentiments regarding the Union in the critical period before  
the election held on December 12, 1997, the Respondent has interfered with, restrained and  
45 coerced employees in the exercise of their rights guaranteed them by Section 7 of the Act and  
thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

6. By suspending and terminating employee David Catanese and terminating employee  
Anthony Carpenter because of employee union activities in pursuing Union affiliation for  
purposes of collective bargaining representation, Respondent violated Section 8(a)(3) and (1) of  
the Act.



7. The election Objections of the Union are sustained to the extent that they coincide with the conclusion above and they are otherwise dismissed.

8. The Objection to the challenged ballot of statutory supervisor Steve Morse is sustained.

9. Anthony Carpenter was improperly prevented from voting in the election of December 12, 1997, and the Respondent other objectional conduct warrant invalidation of the election and require that Anthony Carpenter be allowed to vote retroactively and that the tally of votes be recalculated.

### Remedy

Having found that the Respondent has engaged in certain unfair labor practices, the recommended order requires Respondent to cease and desist therefrom and to take the following affirmative action designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that Respondent be ordered reinstate David Catanese and Anthony Carpenter to their former jobs or if those jobs no longer exists, to a substantially equivalent position, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings he may have suffered because of the discrimination practiced against them by payment to them a sum of money equal to that which he normally would have earned from the date of the discrimination to the date of reinstatement, in accordance with the method set forth in *F.W. Woolworth Company*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB No. 181 (May 28, 1987), and that Respondent expunge from its files any reference to the discharges and notify them in writing that this had been done and that evidence of this unlawful discipline will not be used as basis for future personnel action against them.<sup>1</sup>

In addition, having found that the Respondent engaged in objectionable conduct affecting the results of the election in Case 8-RC-15643, I shall recommend that in lieu of setting aside the election and holding a second election, that Anthony Carpenter retroactively be provided the opportunity to cast his ballot as he would have on December 12, 1997, were it not for the Respondent's illegal conduct.

The Board otherwise has discretion to devise an appropriate Remedy and here, inasmuch as the Respondent's business currently is inactive, it would be a waste of the Board's resources and, in effect, a meaningless gesture to direct a second election. Allowing a retroactive vote by Carpenter, however, would result in a potential tie breaking vote and would allow a certification of results that would be effective if the Respondent or a successor resumed business.

Anthony Carpenter testified that he did not vote because the Respondent owner approached his car in the parking lot at the location and time of the election and told him he was terminated and I find therefore that he was disenfranchised and denied the opportunity to

<sup>1</sup> Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest accrued before 1 January 1987 (the effective date of the amendment) shall be computed as in *Florida Steel Corp.*, 231 NLRB 651 (1977).



vote, compare *Cast North American (Trucking) Ltd.*, 325 NLRB No. 184 (1998). He further testified that if he had voted he would have voted for the Union, a result that effect the results of the election. His presence at the appropriate time and place was confirmed by another witness and, under these circumstances, it will be recommended that in lieu of a second election  
 5 Anthony Carpenter be allowed to retroactively vote as if he were voting in the election of December 12, 1997 (in a manner at the discretion of the Regional Director), that his vote be opened and counted as if it had been cast on December 12, 1997, and that a certification of results be issued.

10 Otherwise, it is not considered necessary that a broad order be issued.

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended<sup>2</sup>

15 ORDER

Respondent, Signature Painting Company, its officers, agents, successors, and assigns, shall:

20 1. Cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act, by threatening employees that a union would never be allowed, that employees would be discharged if they selected a union, that employees would  
 25 lose their jobs if they voted for a union and with closure of the business, by informing employees that it would be futile for them to select the Union as their bargaining representative and by interrogating employees about their sentiments regarding the Union.

(b) Promulgating and maintaining a restrictive arbitration provision in its applications for  
 30 employment that discourage employees from engaging in union or other protected concerted activities or that discourage employees from filing charges and pursuing administrative remedies under the Act.

(c) Suspending or discharging any employee for activity protected by Section 7 of the  
 35 Act.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

40 2. Take the following affirmative action in order to effectuate the policies of the Act:

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<sup>2</sup> If no exceptions are filed as provided Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.



(a) Within 14 days from the date of this Order, offer David Catanese and Anthony Carpenter full reinstatement to their former jobs or, if those jobs no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed; make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the Remedy section of the decision and remove from its files any reference to their unlawful discharges or suspension and within 3 days thereafter notify them in writing that this has been done and that the evidence of unlawful discharge will not be used against them in any way.

(b) Within 14 days from the date of this Order rescind the arbitration provision contained in it applications for employment.

(c) Preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.

(d) Within 14 days after service by the Region, post at any facility it may be operating copies of the attached notice marked "Appendix"<sup>3</sup> and mail copies to all employees it may be operating. Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where the notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that he notices are not altered, defaced, or covered by any other material. As it appears that during the pendency of these proceedings, the Respondent has stopped doing business or closed the facility involved in these proceeding, the Respondent shall duplicate and mail, at its expense, a copy of the notice to all current employees and former employees by the Respondent at any time since October 14, 1997.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondent has taken to comply.

#### DIRECTION

It is further directed that the Regional Director for Region 8 shall, within 10 days from the date of this decision, provide an opportunity for Anthony Carpenter to retroactively cast a ballot in the election field on December 12, 1997, that such ballot be opened and counted; that the ballot cast by statutory supervisor Steve Morse not be counted; and that the Regional Director shall prepare and serve on the parties a revised tally.

If the revised tally reveals that the Union has received a majority of the valid ballots cast, the Regional Director shall issue a certification of representative, If, however, a revised tally shows that the Union has not received a majority of the valid ballots cast, the Regional Director

<sup>3</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."



shall set aside the election and conduct a new election when he deems the circumstances permit the free choice of a bargaining representative.

Dated, Washington, D.C. July 27, 1998.

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Richard H. Beddow, Jr.  
Administrative Law Judge

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APPENDIX B

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed in Section 7 of the Act by threatening employees that a union would never be allowed, that employees would be discharged if they selected a union, that employees would lose their jobs if they voted for a union and with closure of the business, by informing employees that it would be futile for them to select the Union as their bargaining representative and by interrogating employees about their sentiments regarding the Union.

WE WILL NOT promulgate and maintain a restrictive arbitration provision in our applications for employment that discourage employees from engaging in union or other protected concerted activities or that discourage employees from filing charges and pursuing administrative remedies under the Act.

WE WILL NOT suspend or terminate any employees or otherwise discriminating against them in retaliation for engaging in Union activities or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL within 14 days from the date of the Board's Order rescind the arbitration provision contained in its applications for employment.

WE WILL within 14 days from the date of this Order, offer David Catanese and Anthony Carpenter full reinstatement to their former jobs or, if those jobs no longer exists, to a substantially equivalent position, without prejudice to their seniority or any other rights or privileges previously enjoyed; make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the Remedy section of the Judge's decision and remove from our files any reference to their unlawful



discharges or suspension and within 3 days thereafter notify them in writing that this has been done and that the evidence of unlawful discharge will not be used against them in any way.

SIGNATURE PAINTING COMPANY

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(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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This is an official notice and must not be defaced by anyone.

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This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 1240 East 9th Street, Room 1695, Cleveland, Ohio 44199-2086, Telephone 216-522-3729.

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